

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK**

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ELSEVIER, INC., MOSBY, INC. AND  
ELSEVIER BV.,

Plaintiff,

-against-

**DEFENDANTS'  
ANSWER AND DEFENSES**

Index No. 08-CV-4960

ARJUN SAGAR, NISHANT SAGAR,  
AND JOHN DOE NOS. 1-5,

Defendants.

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Defendants, by their attorney, Todd Wengrovsky, for their Answer and Defenses, state as follows:

**“NATURE OF ACTION” SECTION OF COMPLAINT**

1. Defendants admit the allegations of Paragraph 1 of the Complaint relative to the nature of the action, but deny that any infringement has occurred.

**“JURISDICTION AND VENUE” SECTION OF COMPLAINT**

2. Defendants admit the allegations of Paragraph 2 of the Complaint.
3. Defendants deny each and every allegation of Paragraph 3 of the Complaint.

**“PARTIES” SECTION OF COMPLAINT**

4. Defendants admit the allegations of Paragraph 4 of the Complaint.
5. Defendants admit the allegations of Paragraph 5 of the Complaint.

6. Defendants admit the allegations of Paragraph 6 of the Complaint.
7. Defendants admit the allegations of Paragraph 7 of the Complaint.
8. Defendants admit the allegations of Paragraph 8 of the Complaint.
9. Defendants deny each and every allegation of Paragraph 9 of the Complaint.

“THE BUSINESS OF ELSEVIER SECTION OF COMPLAINT

10. Defendants admit the allegations of Paragraph 10 of the Complaint.
11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and on that basis deny the allegations of Paragraph 11 of the Complaint.
12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint, and on that basis deny the allegations of Paragraph 12 of the Complaint.
13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and on that basis deny the allegations of Paragraph 13 of the Complaint.
14. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, and on that basis deny the allegations of Paragraph 14 of the Complaint.
15. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint, and on that basis deny the allegations of Paragraph 15 of the Complaint.

“ELSEVIER’S COPYRIGHTS AND TRADEMARKS” SECTION OF COMPLAINT

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint, and on that basis deny the allegations of Paragraph 16 of the Complaint.

17. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint, and on that basis deny the allegations of Paragraph 17 of the Complaint.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint, and on that basis deny the allegations of Paragraph 18 of the Complaint.

19. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint, and on that basis deny the allegations of Paragraph 19 of the Complaint.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint, and on that basis deny the allegations of Paragraph 20 of the Complaint.

“THE INFRINGING ACTS OF DEFENDANTS” SECTION OF COMPLAINT

21. Defendants deny each and every allegation of Paragraph 21 of the Complaint

“FIRST CLAIM FOR RELIEF” SECTION OF COMPLAINT

22. Defendants repeat and incorporate by reference its replies in Paragraphs 1 through 21 herein inclusive.

23. Defendants admit the allegations of Paragraph 23 of the Complaint.

24. Defendants admit the allegations of Paragraph 24 of the Complaint.

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint relative to licensee status, and on that basis deny that allegation of Paragraph 25 of the Complaint.

26. Defendants deny each and every allegation of Paragraph 26 of the Complaint

27. Defendants deny each and every allegation of Paragraph 27 of the Complaint

28. Defendants deny each and every allegation of Paragraph 28 of the Complaint

29. Defendants deny each and every allegation of Paragraph 29 of the Complaint

30. Defendants deny each and every allegation of Paragraph 30 of the Complaint

“SECOND CLAIM FOR RELIEF” SECTION OF COMPLAINT

31. Defendants repeat and incorporate by reference its replies in Paragraphs 1 through 30 herein inclusive.

32. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint relative to licensee status, and on that basis deny that allegation of Paragraph 32 of the Complaint.

33. Defendants deny each and every allegation of Paragraph 33 of the Complaint

34. Defendants deny each and every allegation of Paragraph 34 of the Complaint

35. Defendants deny each and every allegation of Paragraph 35 of the Complaint

36. Defendants deny each and every allegation of Paragraph 36 of the Complaint

37. Defendants deny each and every allegation of Paragraph 37 of the Complaint

“THIRD CLAIM FOR RELIEF” SECTION OF COMPLAINT

38. Defendants repeat and incorporate by reference its replies in Paragraphs 1 through 37 herein inclusive.

39. Defendants deny each and every allegation of Paragraph 39 of the Complaint

DEFENDANTS’ AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs’ claims are barred to the extent it claims copyright in works that are not copyrightable.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs’ claims are barred to the extent that the content at issue in this case is not the subject of valid registered copyrights under the Copyright Act.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs can not demonstrate injury, impact or damage as a result of any actions by Defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to pursue any Lanham Act claims.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs do not possess enforceable copyrights against Defendants.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are entitled to no damages due to the first sale doctrine.

NINTH AFFIRMATIVE DEFENSE

Defendants had no knowledge that any of their activities constituted infringement and thus their actions were innocent.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering statutory damages or attorney's fees pursuant to 17 U.S.C.

**WHEREFORE**, Defendants respectfully request this Court to grant judgment in its favor, order all claims of the complaint dismissed with prejudice, award Defendants all costs, expenses, disbursements and fees incurred herein, including reasonable attorneys' fees, and such other, further and different relief as the Court may deem just and proper.

Dated: Calverton, New York.  
July 22, 2008

/s/ Todd Wengrovsky  
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